

Just Say Yes: Iran-Contra's Moral

By Walter Pincus
and George Lardner Jr.

WHAT IS the most important lesson that the Iran-contra investigation holds for future presidents? Lawrence E. Walsh does not hesitate: "Make a clean breast of it right away. Take the heat and get it over with."

In an interview on his final day in Washington as the Iran-contra independent counsel, Walsh mused about how presidents and aides should handle scandals involving the White House and what the Iran-contra outcome might have been if President Reagan had come clean, right at the start. Walsh's views on how *not* to confront a potential scandal could give President Clinton something to ponder as his Arkansas financial affairs are examined by a special prosecutor in the coming weeks.

The Iran-contra scandal, as defined by Walsh, can be divided into two parts: the law-breaking and the coverup. The first was mainly political: secretly providing arms to the Nicaraguan contras despite a congressional ban on such assistance, and selling arms to Iran—covertly and in apparent violation of the law—in order to free American hostages and open relations with Tehran.

The laws allegedly broken by the president in this phase—such as the Arms Import Control Act, reporting provisions of the Hughes-Ryan Act and the Boland amendment—were civil statutes, Walsh notes; the violations were serious but not criminal. Though Reagan's disregard for them left him vulnerable to the gravest charge a president can face—impeachment for failing to "take care that the laws be faithfully executed"—the likelihood of such drastic action was minimal. Yet the White House worried about impeachment from the very beginning and drove itself ever deeper toward that possibility.

When word of arms-for-hostage transactions first emerged out of Beirut, the administration's initial

reaction was denial. Despite widespread knowledge of the dealings in the upper echelons of the Reagan administration and the existence of proof, the first formal White House statement on the matter was inaccurate in a key point. The Nov. '10

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release neither confirmed nor denied that arms sales had taken place but stated that "no U.S. laws have been or will be violated and . . . our policy of not making concessions to terrorists remains intact."

Since a conflict existed between the White House press statement and what some officials believed was the truth, presidential aides, Cabinet members and their staffs were forced to reshape their statements and eliminate or hide materials that contradicted what was said.

There was something more troubling still to be disclosed: White House aide Oliver L. North's management of both the Iran and the contra operations had led to a merger of the two, with profits from the Iranian arms sales being used to pay for arms shipped to the Nicaraguan rebels. Attorney General Edwin Meese III's disclosure of that enterprise on Nov. 25, 1986, turned out itself to be a diversion. As Walsh observed in his final report:

"Although this 'diversion' may be the most dramatic aspect of Iran/contra, it is important to emphasize that both the Iran and contra operations, separately, violated

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United States policy and law. The ignorance of the 'diversion' asserted by President Reagan and his Cabinet officers on the National Security Council in no way absolves them of responsibility for the underlying Iran and contra operations."

Walsh makes clear in his final report that Reagan and his top aides led Congress and the public to believe that the criminal excess of the scandal was not Reagan's dealing with Iran but the diversion of arms sale profits to the contras—a scheme portrayed as unauthorized by top officials, a "run-away conspiracy" of White House aides such as North who were far removed from the president.

But, asks Walsh, what would have happened if the White House had halted the initial coverup and in early 1987 given Congress and Walsh the diaries and other materials that eventually took the independent counsel as long as six years to obtain? What if all relevant diaries, notes and memoranda—of Reagan, Vice President George Bush, Chief of Staff Donald T. Regan, Secretary of State George P. Shultz, Defense Secretary Caspar W. Weinberger and assorted aides—had been turned over promptly in early 1987 and not withheld until Walsh discovered that they existed?



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A reasonable case could be made that the public and Congress, having been told the truth, would have forgiven a widely popular president who explained on national television that he had broken laws in order to free American hostages and keep alive the contra movement that by then Congress itself had agreed to support.

Some members of Congress would inevitably have demanded Reagan's sworn testimony and his impeachment if his own diaries and the accounts of meetings with him by Bush and other top officials had been sent to Walsh and the congressional investigating committees before their first hearings were held. Under the Constitution, "The President, Vice President and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."

That doesn't mean the president must have committed a crime punishable by a prison or jail term. When the term "high crimes and misdemeanors" was first used in 1386 against the Earl of Suffolk for applying funds to purposes

other than to those specified, there was no such crime as a "misdemeanor." The word for lesser crimes, then and for another 150 years thereafter, was "trespass."

As Raoul Berger wrote in "Impeachment: The Constitutional Problems," "high crimes and misdemeanors were a category of *political* crimes against the state, whereas 'misdemeanors' described criminal sanctions for *private* wrongs."

The Founding Fathers knew all that. James Madison told the Virginia Ratification Convention that "if the President be connected, in any suspicious manner with any person, and there be grounds to believe that he will shelter him," he could be impeached. In South Carolina, Gen. C. C. Pinckney declared that those "who behave amiss or betray their public trust" are impeachable, and Edward Rutledge said an abuse of trust by the president would qualify.

The possibility of impeachment had, in fact, occurred to Reagan and his aides even as the secret arms-for-hostages deals with Iran were getting underway, a year before the affair became public. The president himself alluded to the danger at a Dec. 7, 1985, meeting on arms shipments to Iran that had resulted in

the release of one American hostage and a plan to initiate new sales to win release of the rest. According to an FBI summary of notes of that session, Reagan told Weinberger, Shultz, Regan and others that the "American people would not understand if four hostages died because I wouldn't break the law." At another point, according to the FBI report, "the president indicated that 'they can impeach me if they want, visiting days are Wednesday.' Weinberger indicated, 'You will not be alone.'"

There was no such light-hearted talk in November 1986, after exposure of the secret arms sales to Iran and the covert supply network for the contra rebels in Nicaragua. Impeachment was never openly discussed, but the possibility deeply disturbed Reagan's top advisers, including First Lady Nancy Reagan.

"It was a no-no word," Don Regan told a federal grand jury six years later. "You never used the word impeachment except to yourself because that was something no one wanted to even think about, but as chief of staff, I felt I should at least look the beast in the eye to see, you know, were we going up here to another Watergate, what were we doing here?"

Nancy Reagan had the same fears following the first press disclosures of the arms sales with Iran. According to Regan's notes, which remained unknown to investigators for more than five years, the first lady told Regan in a Nov. 12, 1986, phone call that she and the president were "very upset" about the situation. "Risking Presidency," Regan jotted down.

What that meant, Regan told the grand jury, was that "he [Reagan] might be impeached, that we were risking the president's tenure in office, his presidency and his reputation. The longer this story persisted, the more the fingers were pointing at Ronald Reagan as either being inept, devious or all of the above, and that we couldn't allow this situation to go on. We were going to have to end it somehow or other."

So began the second part of the scandal—the coverup—the most important part in Walsh's view as a prosecutor. As Sen. J. William Fulbright (D-Ark.) once said at the outset of a Senate investigation of another scandal, "it's not what they did that counts, it's what they did after they were caught."

Instead of laying out the full truth,

the Reagan White House and Cabinet hid the president's Iran-contra role—an undertaking that required perjury, destruction of records, making false statements and obstruction of investigations by Congress and the independent counsel. These coverup activities became the key charges in the convictions of North in 1989 and national security director John Poindexter in 1990—convictions later reversed on technicalities stemming from grants of immunity that Congress had given them in 1987.

Beginning in 1990, the Walsh investigation focused almost entirely on the coverup. Former CIA official Alan D. Fiers Jr. pleaded guilty in 1991 and former CIA deputy director Clair E. George was convicted in 1992; both later were pardoned by Bush. CIA operative Duane R. Clarridge was indicted in 1991 and Weinberger in 1992; both were pardoned by Bush before their trials could take place. In addition, the coverup investigation turned up previously withheld materials, making other individuals subjects of the criminal inquiry although they were never indicted—among them Meese, Shultz, Weinberger and several State Department aides.

Whether Reagan should have been punished is a question for historians now. Despite the voluminous records Walsh belatedly discovered in the final years of his investigation, Walsh said that he still had “no credible evidence that Reagan violated any criminal statute” in the Iran-contra dealings. Nonetheless, Walsh contends, Reagan’s impeachment “should certainly have been considered.”

But Congress in 1987 had no stomach for impeaching Ronald Reagan. As Walsh said in his report, the lawmakers readily accepted “the tendered concept of a runaway conspiracy and avoided the unpleasant confrontation with a powerful President and his Cabinet.” Indeed, Walsh wrote in his report, Congress was in such a rush “to display and conclude its investigation of this unwelcome issue” that it “destroyed the most effective lines of inquiry by giving immunity to Oliver L. North and John M. Poindexter.”

Congress would have been even quicker to drop the matter if Reagan had told the truth, the whole truth and nothing but the truth from the beginning.